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10   **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11   **COUNTY OF SANTA CLARA**

12

13 IN RE REFERENDUM PETITION   Case No. 19CV344912
AGAINST CITY OF CUPERTINO
14 RESOLUTION NO. 18-085   **DECLARATION OF PIU GHOSH**

15   Code Civ. Proc. § 1138

16   Action Filed: March 20, 2019

17   Filed Concurrently with Joint Submission
                                            on Agreed Facts; Memorandum of Points
18   and Authorities; Declarations of Grace
                                            Schmidt and Robert S. Perlmutter
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22   I, Piu Ghosh, declare as follows:

23   1.   I am the Principal Planner/Planning Manager in the Planning Division of the

24 Community Development Department at the City of Cupertino. I have personal knowledge of

25 the facts set forth herein, except as to those stated on information and belief, and as to those, I

26 am informed and believe them to be true. If called as a witness, I could and would competently

27 testify to the matters stated herein. I submit this declaration in support of the Joint Submission

28 on Agreed Facts filed concurrently with this declaration.

Declaration of Piu Ghosh
Case No.

2.   I have been working in this capacity since November 2015. I have a master's degree in economics and a master's degree in urban and regional planning.

3.   Most of my work is with long-range and policy planning, including work on General Plan amendments and specific plans. I also am involved in the City's major current planning efforts. I prepare, review, and authorize agenda items, staff reports, resolutions, and ordinances regarding planning matters.

4.   I am familiar with Resolution No. 18-085, which adopted amendments to the City's General Plan to accommodate the Vallco Town Center Specific Plan Project.

5.   Specifically, I prepared Exhibits GPA-1 and GPA-2 to Resolution No. 18-085 in cooperation with colleagues at the City, and input from management and outside counsel. Exhibits GPA-1 and GPA-2 show changes made to the City's General Plan by Resolution No. 18-085. Exhibit GPA-1 includes General Plan Table LU-1, which establishes "allocations" for commercial, office, residential, and hotel development in various areas of the City.

6.   The City's General Plan was last updated in December 2014, with minor amendments in October 2015. The consultant who prepared the General Plan used Adobe InDesign software to lay out the text and graphics. We then exported that document into a PDF document.

7.   Due to time constraints and since the changes to the General Plan proposed by the Resolution were limited to a few pages, rather than edit the text and graphics using the InDesign software, I created Exhibit GPA-1 to Resolution No. 18-085 by extracting pages affected by the Resolution from the PDF of the General Plan. I used tools available in Adobe Acrobat Pro to indicate the changes made by the resolution. Each individual sheet in Exhibit GPA-1 was edited separately, then combined into a single exhibit. I did all the hands-on editing.

8.   Throughout Exhibit GPA-1, additions to the General Plan made by Resolution No. 18-085 are shown in red underlined text, and deletions are shown by red "strikethrough" lines.

9.   I am aware that at least two tools in Adobe Acrobat Pro can be used to create "strikethrough" lines: the "Edit PDF" tool and the "Comment" tool. I used the "Edit PDF" tool to indicate the strikethroughs in the policies and strategies in Exhibit GPA-1. The "Comment"

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tool also has the ability to show text in strikethrough format and was used in the creation of the strikethrough lines in Tables and Figures in Exhibit GPA-1, including Table LU-1.

10. The document was created and edited over time, with several rounds of edits at the end of August before the Resolution was presented to the Planning Commission.

11. The Planning Commission considered the Resolution on September 4, 2018. I discovered at the Planning Commission hearing that some strikethrough lines were missing from Table LU-1 and some of the numbers were erroneous. When I discovered the errors, I made the necessary corrections to the document at my office while the meeting was in progress, and presented a revised version of Table LU-1 to the Planning Commission as a "desk item."

12. A "desk item" can be any new written information that comes in about a project after the agenda packet is prepared. The desk item information is presented to the Planning Commission or City Council during the hearing and included in the record. Desk items often include communications from the public received after the agenda packet was prepared. A desk item also can be used as a way to make corrections or modifications to what was presented in an agenda packet. If we find a document in the agenda packet that needs correction, we make a corrected document and present it as a desk item.

13. In the desk item presented to the Planning Commission on September 4, 2018, deletions are shown in red strikethrough and new totals are shown in green text. I added both red strikethrough and new green text in the "hotel (rooms)/current built" and "hotel (rooms)/buildout" columns for the North De Anza, North Vallco, and South De Anza planning areas. I also corrected errors in the "Citywide" totals for the "office (s.f.)/buildout," "office (s.f.)/available," "residential buildout" and "residential available" columns. The Planning Commission voted to incorporate the corrections in the desk item.

14. Desk items presented to the Planning Commission are scanned by the City's Deputy Board Clerk into the City's archives as part of the record. The electronic scanned copy of the desk item for Table LU-1, which was presented to the Planning Commission, contains a handwritten note by the Deputy Board Clerk explaining that the table was corrected at the Planning Commission meeting.

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15.   Generally, as I understand it, if something is added to a PDF and then a "flattening" command is run on the document, the added material appears to be part of the document rather than a comment or annotation to the document. I do not recall for sure, but I suspect that when I made the changes to Table LU-1 during the Planning Commission meeting, I likely swapped out the single page containing Table LU-1 and made the necessary changes, but did not run the flattening command again on the whole document.

16.   Following the Planning Commission meeting, I created a final version of Exhibit GPA-1, including Table LU-1, for presentation to the City Council. In the final version, all deleted text is shown with red strikethrough lines, and all new text (including the corrected text that was shown in green in the Planning Commission desk item) is shown as red underlined text.

17.   Based on my review of the relevant electronic documents, I believe that the flattening command was not run on Table LU-1 after the final changes were made, and that the strikethrough lines thus appeared as "comments" or "markup" on the document rather than as part of the underlying document.

18.   I do not recall exactly when I made the final changes to Table LU-1. I have reviewed the metadata associated with the comments in Table LU-1 which indicates the date on which each comment was made. This metadata indicates that the most recent comments added to Table LU-1 are from September 4, 2018 (the night of the Planning Commission meeting.) However, the metadata for the document associated with the final PDF of Exhibit GPA-1 shows the document was last edited on September 10, 2018. While I do not recall exactly which edits these might be, I do recall that the only change made to Exhibit GPA-1, between the Planning Commission meeting (September 4, 2018) and publication of the City Council agenda packet, was to change the color of the green text in Table LU-1 to red.

19.   The City Council adopted Resolution No. 18-085 on September 19, 2018.

20.   After City Council action on the Vallco Specific Plan project, I assembled the electronic documents related to all resolutions adopted and all ordinances introduced by the Council, including Resolution No. 18-085, into a "Final Action" folder to assist the City Clerk in locating all documents in one place. There were three separate documents in the "Final

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1 Action" folder for Resolution No. 18-085: one Word document containing Resolution No. 18-

2 085 and two PDF documents containing Exhibits GPA-1 and GPA-2.

3   21.   Typically, after the City Council adopts a draft resolution, the City Clerk then fills

4 in the relevant dates, adds signature blocks, and records the City Council's vote in the Word

5 document containing the resolution. The City Clerk then prints that Word document, along with

6 any separate exhibits, and puts it together for the Mayor's signature and the City Clerk's

7 certification.

8   22.   I happened to be present when the City Clerk printed Resolution No. 18-085 and

9 Exhibits GPA-1 and GPA-2 for the Mayor's signature. To the best of my recollection, the City

10 Clerk followed the process outlined above in printing the Resolution and exhibits for the

11 Mayor's signature.

12   23.   I am informed and believe that printing preferences in the software used to view

13 and print PDF documents determine whether "comments" or "markup" in a PDF document print

14 or not. I was not aware at the time the City Clerk printed the original of Resolution No. 18-085

15 for the Mayor's signature that the strikethrough lines in Table LU-1 were read by the software as

16 "comments" or "markup," and that due to the default settings on the City Clerk's computer, the

17 lines would therefore not print. We did not expect this to happen. It was completely inadvertent.

18   I declare under penalty of perjury under the laws of the State of California that the

19 foregoing is true and correct.

20   Executed on this 19th day of March, 2019, at Cupertino, California.

21

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23 By: _____

24   PIU GHOSH

25   Principal Planner, City of Cupertino

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